

FILED

JAN 8 2008

CLERK DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY

## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) Criminal No. 07CR3326-JM  
11 Plaintiff, ) FINDINGS AND RECOMMENDATION OF  
12 v. ) THE MAGISTRATE JUDGE UPON A  
13 RICARDO EDIBERTO GARCIA-TUN, ) PLEA OF GUILTY WITH WAIVER OF  
14 Defendant. ) OBJECTIONS AND THE PREPARATION  
15 ) OF THE PRESENTENCE REPORT

16 Upon Defendant's request to enter a plea of Guilty pursuant  
17 to Rule 11 of the Federal Rules of Criminal Procedure, this  
18 matter was referred to the Magistrate Judge by the District  
19 Judge, with the written consents of the Defendant, counsel for  
20 the Defendant, and counsel for the United States.

21 Thereafter, the matter came on for a hearing on Defendant's  
22 plea of guilty, in full compliance with Rule 11, Federal Rules of  
23 Criminal Procedure, before the Magistrate Judge, in open court  
24 and on the record.

25 In consideration of that hearing and the allocution made by  
26 the Defendant under oath on the record and in the presence of  
27 counsel, and the remarks of the Assistant United States Attorney,  
28 ///

1 I make the following FINDINGS - that the Defendant  
2 understands:

- 3 1. the right to persist in a plea of "not guilty";
- 4 2. the right to a speedy and public trial;
- 5 3. the right to be tried by a jury, or the ability to  
6 waive that right and have a judge try the case without  
7 a jury;
- 8 4. the right to the assistance of counsel at trial;
- 9 5. that, at trial, there would be the right to confront  
10 and cross-examine the witnesses against the Defendant;
- 11 6. that, at trial, there is the right to present a  
12 defense, and the right to have witnesses subpoenaed to  
13 testify on the Defendant's behalf;
- 14 7. that, at trial, the Defendant would have the right  
15 against compelled self-incrimination;
- 16 8. the nature of the charge filed in this case;
- 17 9. the maximum possible sentence that could be imposed  
18 (including imprisonment, fine, term of supervised  
19 release, and mandatory special assessment), the effect  
20 of a supervised release term, and that the sentencing  
21 guidelines are only advisory so that the Court may  
22 sentence Defendant up to the statutory maximum;
- 23 10. the terms of the plea agreement;

24 I further find that:

- 25 11. that Defendant's plea of guilty is made knowingly and  
26 voluntarily;
- 27 12. the Defendant is competent to enter a plea; and
- 28 13. there is a factual basis for Defendant's plea.

1       **I therefore RECOMMEND that the District Judge accept the**  
2 **Defendant's plea of guilty.**

3       The sentencing hearing will be before United States District  
4 **Judge JEFFREY T. MILLER, on February 1, 2008, at 9:00 A.M..**

5       Objections to these Findings and Recommendation were waived  
6 by the parties at the hearing. The parties have also waived the  
7 preparation of the Presentence report in this case.

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10 Dated: JANUARY 8, 2008



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Honorable NITA L. STORMES  
United States Magistrate Judge

12 Copies to:

13 Hon. JEFFREY T. MILLER  
U.S. District Judge

14 JOSEPH J.M. ORABONA  
United States Attorney

16 ZANDRA LOPEZ, CJA  
Counsel for Defendant

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